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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

CHEVRON U.S.A. INC., a corporation,
Petitioner,

v.

NATURAL RESOURCES DEFENSE COUNCIL, INC., *et al.*,
Respondents.

AMERICAN IRON AND STEEL INSTITUTE, *et al.*,
Petitioners,

v.

NATURAL RESOURCES DEFENSE COUNCIL, INC., *et al.*,
Respondents.

ADMINISTRATOR,
ENVIRONMENTAL PROTECTION AGENCY,
Petitioner,

v.

NATURAL RESOURCES DEFENSE COUNCIL, INC., *et al.*,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF PETITIONERS

AMERICAN IRON AND STEEL INSTITUTE, *et al.*,
AMERICAN PETROLEUM INSTITUTE, *et al.*,
CHEMICAL MANUFACTURERS ASSOCIATION,
GENERAL MOTORS CORPORATION, and
RUBBER MANUFACTURERS ASSOCIATION

August 31, 1983

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QUESTIONS PRESENTED

1. Whether the court below impermissibly intruded upon the discretion vested in the states by the Clean Air Act when that court deprived the states of the authority to define the term "source" as an industrial plant for their new source review programs in nonattainment areas, even where such a definition is demonstrated to be consistent with reasonable further progress toward, and timely attainment of, national ambient air quality standards.
2. Whether the court below wrongfully substituted its policy judgment for that of EPA, when it determined, without support in the language or legislative history of the Clean Air Act or in the record before it, that EPA had no authority to define "source" as an industrial plant or to allow the states to adopt a similar definition of "source" for the purposes of new source review programs in nonattainment areas.
3. Whether the court below erred in vacating EPA's rescission of "reconstruction," a regulatory definition not found in the Clean Air Act which had imposed new source-related preconstruction review requirements upon modifications of industrial facilities.
4. Whether the court below imposed on EPA an unduly high burden to justify rescission of a portion of its rules implementing Part D of the Clean Air Act.

LIST OF PARTIES BELOW

The Natural Resources Defense Council, Inc. (NRDC), Citizens For A Better Environment, Inc., and the Northwestern Ohio Lung Association, Inc. were petitioners in the proceedings below. Respondents below were the Environmental Protection Agency (EPA) and Anne M. Gorsuch, Administrator of EPA.[1] The American Iron and Steel Institute and seven of its member companies,[2] the American Petroleum Institute and thirteen of its member companies,[3] the Chemical Manufacturers Association, General Motors Corporation, the Rubber Manufacturers Association and a group of 81 electric power generating companies and two electric utility trade associations[4] were intervenor-respondents below.[5]

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[1] William D. Ruckelshaus has since replaced Ms. Gorsuch as Administrator of EPA.

[2] Allegheny Ludlum Steel Corporation, Armco Inc., Bethlehem Steel Corporation, Carpenter Technology Corporation, Inland Steel Company, Jones & Laughlin Steel Corporation, Republic Steel Corporation, and United States Steel Corporation.

[3] Atlantic Richfield Company, Chevron U.S.A. Inc., Continental Oil Company, Exxon Corporation, Gulf Oil Corporation, Marathon Oil Company, Mobil Oil Corporation, Phillips Petroleum Company, Shell Oil Company, Standard Oil Company (Indiana), Texaco Inc., The Standard Oil Company (Ohio), and Union Oil Company of California.

[4] Alabama Power Company, Appalachian Power Company, Arizona Public Service Company, Baltimore Gas and Electric Company, Boston Edison Company, Carolina Power & Light Company, Central and South West Corporation, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, West Texas Utilities Company, Central Hudson Gas & Electric Corporation, Central Illinois Light Company, Central Illinois Public Service Company, Central Maine Power Company, The Cincinnati Gas & Electric Company, Columbus and Southern Ohio Electric Company, Commonwealth Edison Company, Consolidated Edison Company of New York, Inc., Consumers Power Company, The Dayton Power and Light Company, Delmarva Power & Light Company, The Detroit Edison Company, Duke Power

Company, Florida Power Corporation, Florida Power & Light Company, Georgia Power Company, Gulf Power Company, Gulf States Utilities Company, Houston Lighting & Power Company, Illinois Power Company, Indiana & Michigan Electric Company, Indianapolis Power & Light Company, Iowa-Illinois Gas and Electric Company, Iowa Power and Light Company, Iowa Public Service Company, Kansas City Power & Light Company, Kentucky Power Company, Kentucky Utilities Company, Madison Gas and Electric Company, Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service Inc., Mississippi Power Company, Monongahela Power Company, Nevada Power Company, New England Power Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Northeast Utilities Service Company, The Connecticut Light and Power Company, The Hartford Electric Light Company, Holyoke Water Power Company, Western Massachusetts Electric Company, Northern Indiana Public Service Company, Ohio Edison Company, Pennsylvania Power Company, Ohio Power Company, Ohio Valley Electric Corporation, Oklahoma Gas and Electric Company, Pacific Gas and Electric Company, Pennsylvania Power & Light Company, The Potomac Edison Company, Potomac Electric Power Company, Public Service Company of Indiana, Inc., Public Service Electric and Gas Company, Rochester Gas and Electric Corporation, Salt River Project, San Diego Gas & Electric Company, Southern California Edison Company, Tampa Electric Company, Texas Utilities Generating Company, Toledo Edison Company, Tucson Electric Power Company, Union Electric Company, Virginia Electric and Power Company, West Penn Power Company, Wisconsin Electric Power Company, Wisconsin Power and Light Company, Wisconsin Public Service Corporation, the Edison Electric Institute, and the National Rural Electric Cooperative Association.

[5] In accordance with Rule 28.1 of the Rules of the Supreme Court, the parent companies of, and the non-wholly owned subsidiaries and affiliates of each corporate party upon whose behalf this Brief is filed are set forth in the Appendix to the Petition for a Writ of Certiorari in No. 82-1247 at 34a-61a. Corrections of and additions and deletions to the list of non-wholly owned subsidiaries and affiliates of three of the American Petroleum Institute's member companies, Phillips Petroleum Company, Gulf Oil Corporation, and Mobil Oil Corporation, are set forth in Appendix C hereto.

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46 Fed. Reg. 50766 (October 14, 1981) ... 2, 13, 14, 16, 17, 33, 34, 35

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National Commission on Air Quality, *To Breathe Clean Air* (1981) 25
New Ways to Short Cut Costly Rules, Dun's Review, February, 1980 25
New York Times, December 6, 1979 25
Washington Post, December 10, 1979 25

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OPINIONS BELOW

The opinion of the court of appeals is reported at 685 F.2d 718 and is reprinted in the appendix to Chevron U.S.A. Inc.'s petition for a writ of certiorari, No. 82-1005 ("Chev. Pet. App."), at A-1 to A-20. The Environmental Protection Agency's final regulations and statement of basis and purpose are published at 46 Fed. Reg. 50766 (October 14, 1981) and are reprinted in the Joint Appendix at J.A. 97-117.

JURISDICTION

The opinion and judgment of the court of appeals were entered on August 17, 1982. *See* Chev. Pet. App., A-1 to A-20. Timely petitions for rehearing and suggestions for rehearing *en banc* were denied by orders of the court of appeals entered on October 27, 1982. *See* Chev. Pet. App., B-22 to B-25. The petition for a writ of certiorari in No. 82-1005 was filed on December 15, 1982; the petition in No. 82-1247 was filed on January 25, 1983. On January 21, 1983 the Chief Justice extended the time for filing a petition for a writ of certiorari in No. 82-1591 to and including March 26, 1983; the petition was filed on March 25, 1983. The three petitions were granted and consolidated on May 31, 1983. Jurisdiction to

review the decision below is vested in this Court by 28 U.S.C. § 1254(1).

STATUTES AND REGULATIONS INVOLVED

This case involves sections 101, 107, 110, 111, 171, 172, 173, and 302 of the Clean Air Act, as amended, 42 U.S.C. §§ 7401, 7407, 7410, 7411, 7501, 7502, 7503, and 7602 (Supp. IV). The pertinent portions of these statutory provisions are set forth in Appendix A to this brief. The regulations at issue are reprinted in the Joint Appendix at J.A. 97-117.

STATEMENT OF THE CASE

A. The Statutory Framework

The 1970 Clean Air Act[1] established a joint federal/state framework for protecting and enhancing air quality throughout the country. It directed the Environmental Protection Agency ("EPA") to establish national ambient air quality standards ("NAAQS") limiting the concentration of pollutants that would be permitted in the atmosphere.[2] Primary responsibility for attaining and maintaining those standards, however, was assigned to the states.[3] Within nine months after promulgation of a NAAQS, each state was required to develop and adopt a State Implementation Plan ("SIP" or

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[1] Clean Air Act of 1970, Pub. L. No. 91-604, 84 Stat. 1676, then codified at 42 U.S.C. § 1857 *et seq.* In 1977 the Act was further amended and, as amended, was recodified at 42 U.S.C. §§ 7401 *et seq.* (Supp. IV).

[2] Section 109, 42 U.S.C. § 7409. The original NAAQS for sulfur oxides (sulfur dioxide), particulate matter, carbon monoxide, photochemical oxidants, hydrocarbons and nitrogen dioxide were promulgated on April 30, 1971. 36 Fed. Reg. 8186. Ambient air standards are now in effect for six pollutants: sulfur oxides, particulate matter, carbon monoxide, nitrogen oxides, photochemical oxidants (expressed as ozone), and lead. *See* 40 C.F.R. Part 50 (1982).

[3] Section 101(a)(3) and 110(a)(2), 42 U.S.C. §§ 7401(a)(3) and 7410(a)(2).

"state plan") incorporating such programs, measures and means as the state found necessary and sufficient to achieve compliance with the NAAQS by the statutory deadlines.[4] EPA was required to review these SIPs and to determine whether they met the requirements of section 110(a)(2), 42 U.S.C. § 7410(a)(2),[5] but as this Court made clear, the scope of that review was limited: so long as a plan, in its entirety, provided for timely attainment of the NAAQS, EPA had no authority to second-guess the mix of emission limits and other requirements by which the state chose to achieve that result. *Train v. NRDC*, 421 U.S. 60, 79-80 (1975).

Notwithstanding the adoption and implementation of SIPs by all of the states, not all areas of the country were in compliance with the NAAQS by the statutory attainment dates. To address the question whether industrial plants could be constructed or modified in such areas, EPA published in 1976 an "Emission Offset Interpretative Ruling" ("Offset Ruling") which required the states to conduct preconstruction review of, and to impose certain conditions upon, any major new "stationary sources" and any major modifications to existing "stationary sources" proposed to be constructed in an area exceeding a national ambient air quality standard.[6]

In addressing industrial growth issues in the 1977 Amendments to the Clean Air Act,[7] Congress preserved the Act's basic federal/state framework but required the states to incorporate several new elements in their SIPs both for those

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[4] Section 110(a)(1), 42 U.S.C. § 7410(a)(1).

[5] If a state failed to satisfy any of the requirements of section 110(a)(2), EPA could promulgate the necessary requirements in its own plan under section 110(c), 42 U.S.C. § 7410(c).

[6] 41 Fed. Reg. 55524 (December 21, 1976). Codified as Appendix S to 40 C.F.R. Part 51 (1982), interpreting new source review provisions set forth in 40 C.F.R. § 51.18 (1982).

[7] Pub. L. No. 95-95, 91 Stat. 685, 42 U.S.C. §§ 7401 *et seq.* (Supp. IV).

areas meeting NAAQS (attainment areas) and those not meeting NAAQS (nonattainment areas). For attainment areas, Congress added a new Part C to Title I (Sections 160-169A, 42 U.S.C. §§ 7470-7479A), which provided for the prevention of significant deterioration ("PSD") of ambient air quality in those areas through preconstruction review and oversight of new industrial growth. The counterpart for nonattainment areas was a new Part D of Title I (Sections 170-178, 42 U.S.C. §§ 7501-7508), which Congress fashioned after EPA's 1976 Offset Ruling.

Part D requires the states, for each nonattainment area within their borders, to amend their SIPs to provide for attainment by new deadlines and for "reasonable further progress" toward attainment in the interim.[8] This goal is to be achieved (1) by implementation of all reasonably available control measures for existing sources, and (2) by adoption of such other requirements as are necessary to demonstrate reasonable further progress and attainment. Section 172(b)(2) and (3), 42 U.S.C. § 7502 (b)(2) and (3). In addition, each state must require a permit of any new "major stationary source" or any alteration to an existing "major stationary source" that would result in a net increase in emissions from that "source," before allowing construction to commence.[9]

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[8] Section 172, 42 U.S.C. § 7502. The Act defines "reasonable further progress" as "annual incremental reductions in emissions of the applicable air pollutant . . ." Section 171(1), 42 U.S.C. § 7501(1). This requirement precludes the states from deferring necessary emission reductions to the end of the statutory compliance period.

[9] Section 172(b)(6), 42 U.S.C. § 7502(b)(6). A "major stationary source" is any stationary facility or source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any air pollutant. Section 302(j), 42 U.S.C. § 7602(j). The Act does not define what constitutes a "major" modification. EPA by regulation has defined as "major" those modifications which result in a "significant net emissions increase" of any pollutant. 40 C.F.R. § 51.18(j)(1)(v) (1982). EPA has specified the levels at which

The state may issue such a permit only upon a showing that:

(1) the increase in emissions from the new or modified major source will be more than offset by corresponding emission decreases in the area, or have already been accounted for by a growth allowance built into the state plan;

(2) the new or modified major source installs control technology to achieve the lowest achievable emission rate ("LAER") for such category of sources;

(3) the new source owner certifies that the other major sources it owns in the state are in compliance with the Act; and

(4) the state is carrying out its revised Part D state plan.

Section 173(1)-(4), 42 U.S.C. § 7503(1)-(4).

Following designation of an area as nonattainment, during the period the states are completing the required revisions to their SIPs, new source construction is governed by EPA's Offset Ruling, which imposes permit conditions similar to those that must be imposed under a Part D SIP. *See* 40 C.F.R. § 52.24(b) (1982); 40 C.F.R. Part 51, Appendix S (1982). If a state's Part D SIP has not been approved by EPA within the time allotted by the Act, section 110(a)(2)(I), 42 U.S.C. § 7410(a)(2)(I), precludes the construction or modification of any major "source" that will cause or contribute to a violation of the NAAQS in a nonattainment area.[10] This

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an increase is "significant" on a pollutant-by-pollutant basis. The "significance levels" currently in force are:

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy

40 C.F.R. § 51.18(j)(1)(xiii) (1982).

[10] Section 110(a)(2)(I), 42 U.S.C. § 7410(a)(2)(I).

prohibition is sometimes referred to as the "construction moratorium."[11]

B. EPA's Regulations Defining the Term "Source"

The Clean Air Act does not include a generally applicable definition of "source" in section 302, 42 U.S.C. § 7602, which sets forth definitions for use throughout the Act, or a specifically applicable definition in Part D for purposes of nonattainment review.[12] The principal issue in this case is whether EPA, in the absence of an applicable statutory definition, has discretion to define, and to allow the states to define, the term "source" as an industrial plant for purposes of preconstruction review under Part D of the Clean Air Act. This term is critical, for while the construction moratorium and permit programs apply both to new "sources" and modifications of existing "sources," a "modification" occurs only if there is a net increase in emissions from the "source" as a whole. Sections 111(a)(4) and 171(4), 42 U.S.C. §§ 7411(a)(4) and 7501(4). Thus, if "source" is defined as an industrial plant, process modifications or equipment changes within the plant will constitute neither new sources nor modifications so long as there is no significant net emission increase from the plant as a whole.

A plantwide definition of "source" allows plants to offset increased emissions from one unit or piece of equipment in the plant with an equal or greater contemporaneous decrease

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[11] *See, e.g.*, 46 Fed. Reg. 16280 (March 12, 1981).

[12] Subsection (a)(2) of section 111, 42 U.S.C. § 7411, relating to standards of performance for new sources, defines "stationary source" as a "building, structure, facility, or installation," but neither the Act nor its legislative history provides any firm guidance as to how those four component terms should be defined. Moreover, that definition by its terms applies only to that one section. *See* introductory language of section 111(a), 42 U.S.C. § 7411(a).

in emissions elsewhere in the plant,[13] and thereby to retain necessary flexibility to make process changes or plant improvements quickly with no threat to ambient air quality. In areas where EPA has imposed, or will impose, a new source construction ban, this definition will permit the modernization of our nation's industrial base by the replacement of obsolete facilities with modern and efficient facilities which have fewer emissions. If, on the other hand, "source" is defined as a piece of equipment, any addition or replacement of a piece of equipment with emissions in excess of 100 tons per year will be subject to review or prohibited, as will any alteration to such a piece of equipment which increases its emissions, even if plantwide emissions do not increase or actually decline.

1. EPA's Pre-1980 Regulatory Treatment of the Term "Source" in Nonattainment Areas

EPA's original 1976 Offset Ruling, upon which the new source review aspects of Part D are based, did not explicitly define "stationary source" or "source." EPA addressed this issue directly for the first time, in the wake of the 1977 Amendments to the Act, in January 1979 revisions to the Offset Ruling. 44 Fed. Reg. 3274 (January 16, 1979). In the preamble to the revised 1979 Offset Ruling, EPA employed the term "source" to refer to an entire *plant*, 44 Fed. Reg. 3276, but did not allow the netting of intra-plant emission increases and decreases in those states lacking approved Part D SIPs. Significantly, however, in those states with acceptable Part D SIPs, modifications of major sources in nonattainment

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[13] The netting of internal emission increases against internal emission decreases is an example of what is sometimes referred to as the "bubble concept." A source is treated as if it were under a "bubble" for purposes of determining its net emissions.

areas were not required to be subject to preconstruction review where there was no net emission increase from the plant as a whole. *Id.* at 3276-77. As EPA stated:

> Congress intended under Section 173 of the Act that States would have some latitude to depart from the strict requirements of this Ruling when the State plan is revised and is being carried out in accordance with Part D. Under a Part D plan, therefore, there is less need to subject a modification of an existing facility to LAER [lowest achieveable emission rate] and other stringent requirements if the modification is accompanied by sufficient intrasource offsets so that there is no net increase in emissions. Consequently, for a plan approved and implemented under Part D, it is acceptable for the State to include the above exemption for intrasource offsets in its new source construction under the State plan . . .

Id. at 3277.

2. EPA's 1980 Imposition of a "Dual" Definition of "Source" in Nonattainment Areas

In 1979 the court below, in *Alabama Power Co. v. Costle*, 636 F.2d 323 (D.C. Cir. 1979), vacated, *inter alia*, EPA regulations prohibiting the netting of emission increases and decreases for purposes of the PSD program under Part C of the Act.[14] Thereafter, EPA proposed new—and different—definitions of the term "source," one definition to be used for the Part C PSD program and also for approved Part D state plans and another definition to be used for the construction moratorium, the Offset Ruling and state plans not approved as meeting the requirements of Part D. 44 Fed. Reg. 51924

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[14] 43 Fed. Reg. 26380 (June 19, 1978).

(September 5, 1979). For purposes of Part C, EPA, at the direction of the *Alabama Power* decision, proposed to define a "source" for purposes of Part C as an industrial *plant.*[15] EPA indicated that it would also permit the states to adopt a similar definition of "source" where the overall state plan had been approved as meeting the requirements of Part D. Where a state Part D plan had not been approved, however, EPA proposed to define a "source" *both* as the industrial plant *and* as an individual piece of process equipment within the plant. 44 Fed. Reg. at 51956, 51958. EPA subsequently labelled this the "dual" definition of "source."[16]

As EPA's preamble discussion of its proposal made clear, the "dual" definition of "source" represented a substantial departure from EPA's prior policy of looking to the entire plant, and not to individual pieces of equipment within a plant, in determining whether or not a source must undergo preconstruction review. *See, e.g.*, 44 Fed. Reg. at 51931-2. EPA gave the following explanation for proposing two opposite definitions for the same statutory term:

> To assure adequate review of new plants, a large grouping must be subject to nonattainment NSR [new source review]. . . To do otherwise would allow a new plant that is divided into separate process units, each below the potential emission threshold, to escape review. New emissions could thus be added to the existing violation, without review, making attainment virtually impossible. Therefore, EPA believes that nonattainment programs, like PSD programs, must apply NSR to entire plants.
>
> EPA believes that pieces of process equipment within plants should also be subject to NSR under nonattainment programs. This would prevent use of plant-wide offsets for increases from construction or modification of major pieces of process equipment.

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[15] *See* 44 Fed. Reg. 51947-48 (proposed 40 C.F.R. § 51.24(b)(5)) and 44 Fed. Reg. 51931-32.

[16] *See, e.g.*, 45 Fed. Reg. 52696 (August 7, 1980).

Id. at 51932. EPA stated that, in determining whether preconstruction review would be required, the Agency would look to emission increases from each major piece of process equipment without considering contemporaneous emission reductions within the plant as a whole. *Id.*

Despite this policy change, EPA recognized that the states should have a voice in the matter and proposed to apply the "dual" definition of "source" *only* where a state had failed to submit an approvable Part D SIP. *See* 44 Fed. Reg. at 51933. States with approved Part D SIPs were permitted—and even encouraged—to employ a plantwide "source" definition if the SIP as a whole provided for reasonable further progress toward and attainment of the NAAQS. As noted by EPA:

> Use of only a plant-wide definition of source will permit plant-wide offsets . . . [which is] appropriate once a SIP is adopted that will assure the reductions in existing emissions necessary for attainment . . . . If the level of emissions allowed in the SIP is low enough to assure reasonable further progress and attainment, new construction or modifications with enough offset credit to prevent an emission increase should not jeopardize attainment.

44 Fed. Reg. at 51933.

When EPA promulgated final PSD and nonattainment regulations on August 7, 1980 (45 Fed. Reg. 52676), the Agency dropped its proposal to allow states with approved Part D SIPs to adopt a plantwide definition of "source" and instead *required* all states to adopt the "dual" definition, regardless of whether the "dual" definition was necessary for the particular state to achieve attainment. EPA's sole justification was that its regulation would subject the maximum number of "sources" and internal modifications at major "sources" to new source review and to the permit requirements of Part D. 45 Fed. Reg. 52676, 52697 (August 7, 1980).

EPA's August 7, 1980 PSD and nonattainment regulations were challenged immediately in the court below and consolidated with *Chemical Manufacturers Association* v. *EPA*,

No. 79-1112 and consolidated cases (D.C. Cir. 1979) (*"CMA v. EPA"*).[17]

3. EPA's Return to a Plantwide Definition of "Source"

On March 12, 1981 EPA proposed to replace its "dual" definition of "source" with a plantwide "source" definition identical to the Part C "source" definition. 46 Fed. Reg. 16280.[18]

At 46 Fed. Reg. 16281, EPA gave seven reasons for its return to a plantwide "source" definition:

1. The "dual" definition, which makes it costly and time consuming to undergo an equipment or process change, "can act as a disincentive to new investment and modernization by discouraging modifications to existing facilities."

2. The "dual" definition prohibits the construction or modification of major pieces of process equipment in a "substantial number" of areas where the construction moratorium had taken effect (because no Part D SIP had been approved),

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[17] The CMA v. EPA case commenced with challenges to EPA's 1979 revised Offset Ruling, 44 Fed. Reg. 3274 (January 16, 1979). Briefs challenging the legality of certain provisions in the August 1980 regulations, including the "dual" definition of "source," were filed on February 12, 1981. Shortly thereafter, EPA requested and was granted a deferral of further briefing pending the outcome of settlement discussions. The negotiations resulted in a settlement agreement which was filed with the court below on February 22, 1982. Further proceedings in CMA v. EPA have been deferred pending implementation of the settlement agreement. Neither the negotiations nor the settlement agreement addressed the "dual" source definition, which was the subject of further rulemaking proceedings commencing with EPA's March 12, 1981 Federal Register proposal. *See* text immediately following.

[18] EPA also proposed to delete its requirement that "reconstructed" facilities in nonattainment areas undergo new source review as if they were new sources. 46 Fed. Reg. at 16281. *See* discussion *infra* at 15–17.

even though no overall increase in emissions at the plant would result.

3. For the above reasons, the dual definition can "actually retard progress in air pollution control by discouraging replacement of older, dirtier processes or pieces of equipment with new, cleaner ones."

4. The plantwide definition would simplify EPA's rules by utilizing a uniform definition of "source" for the PSD, nonattainment, and construction moratorium programs and, thereby, would reduce "confusion and inconsistency."

5. Since the states remain subject to the requirement that they demonstrate attainment of the NAAQS for all nonattainment areas as expeditiously as practicable and show reasonable further progress towards attainment, deletion of the mandatory "dual" "source" definition "should not interfere with the fundamental purpose of Part D of the Act."

6. Under Section 111 of the Act, 42 U.S.C. § 7411, new source performance standards "will continue to apply to many new or modified facilities and will assure use of the most up-to-date pollution control techniques regardless of the applicability of nonattainment area new source review."

7. Review would continue to be required where overall emissions from the plant increase above *de minimis* levels, thereby protecting air quality.

EPA concluded that, in light of the above considerations, the "dual" definition was "excessively and unnecessarily burdensome," 46 Fed. Reg. at 16281, and proposed to delete it. As stressed by EPA, and as pointed out in number 5 above, EPA would carefully scrutinize any state's deletion of the "dual" definition of "source" to determine that the state's Part D SIP would still ensure reasonable further progress and attainment of the NAAQS.

On October 14, 1981 EPA announced its decision to adopt the plantwide definition of "source" as proposed and reported that of the 81 comments it had received, "the majority . . . favored deletion of the dual definition." 46 Fed. Reg. 50767. Having evaluated these comments, EPA concluded that two

principal concerns warranted this approach to Part D new source review:

> First, today's action means that both the PSD and nonattainment programs will use the same definition of "source." This alone will reduce regulatory complexity. Sources will no longer have to figure out what an "installation" is, which should lessen any confusion engendered by EPA's August 7 rules.
>
> Second, and more important, by removing the requirement that states adopt a dual definition, EPA is acting consistently with the purposes of Part D of the Act. Congress expressly provided that states are to play the primary role in pollution control. Sections 101(a)(3), 101(b). It also intended that states retain the maximum possible flexibility to balance environmental and economic concerns in designing plans to clean up nonattainment areas. *See, e.g.*, Sen. Rep. 95-127 at pp. 10-11; *cf. NRDC* v. *Train*, 421 U.S. 60 (1975). Today's action follows this mandate by allowing states much greater flexibility in developing their nonattainment NSR [new source review] programs and attainment demonstrations. *Since demonstration of attainment and maintenance of the NAAQS continues to be required, deletion of the dual definition increases state flexibility without interfering with timely attainment of the ambient standards, and so is consistent with Part D.*

Id. at 50767 (October 14, 1981) (emphasis added).

NRDC challenged the revised regulations in the court below in *NRDC v. Gorsuch*, 685 F.2d 718 (D.C. Cir. 1982). The court of appeals concluded that neither the Act nor its legislative history determined the scope of the term "source," 685 F.2d at 723, Chev. Pet. App. at A-8, but held itself "compelled" to strike down EPA's definition of "source" as *per se* invalid on the sole basis of an alleged "bright line" drawn, in its view, by other panels of that court in two prior cases involving air quality. 685 F.2d at 726-27, Chev. Pet. App. at A-16 to A-17. The court held that *ASARCO, Inc. v. EPA*, 578 F.2d 319 (1978), and *Alabama Power Co. v. Costle*, 636 F.2d 323 (1979), together drew an uncrossable line between programs designed to "improve" air quality, for

which a single plantwide "source" definition is *precluded*, and programs that only "maintain" air quality, for which a single plantwide "source" definition is *required*.[19] 685 F.2d at 720, 725-6, Chev. Pet. App. at A-2 to A-3, A-14 to A-15.

The court below did not remand, but vacated EPA's October 14, 1981 regulations deleting the "dual" "source" definition. The court also denied petitioners' timely petition for rehearing and suggestion for rehearing *en banc*. Chev. Pet. App. at B-24, B-25. In a subsequent case, the court cited the decision below as "implicitly assuming that EPA will return to its previous regulation defining 'source' under the Clean Air Act." *See Small Refiner Lead Phasedown Task Force v. EPA*, ____ F.2d ____, 18 Env't Rep. Cas. (BNA) 1681, 1682 (D.C. Cir. 1983).

C. EPA's Deletion of the "Reconstruction" Provision

EPA's August 7, 1980 regulations adopting the "dual" "source" definition also included a provision which subjected "reconstructions" of existing sources in nonattainment areas to the Part D preconstruction requirements and the construction moratorium. A "reconstruction" was deemed to occur when components of a source worth more than 50% of the capital cost of the source were replaced, regardless of whether this caused a net increase (or decrease) in emissions.[20]

The 1976 Offset Ruling had not mentioned or provided for special treatment of "reconstructions."[21] EPA first applied the reconstruction concept to new source review in nonattainment areas in the January, 1979 amendments to the 1976

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[19] As the court below stated, "We express no view on the decision we would reach if the line drawn in Alabama Power and ASARCO did not control our judgment." 685 F.2d at 720 n.7, Chev. Pet. App. at A-4 n.7.

[20] *See* 45 Fed. Reg. 52742 (August 7, 1980) (former 40 C.F.R. § 51.18(j)(1)(ix) (1981)).

[21] The 1976 Offset Ruling defined the terms "major source" and "major modification" but not "reconstruction." *See* 41 Fed. Reg. at 55528.

Offset Ruling. 44 Fed. Reg. 3274, 3282 (January 16, 1979). EPA provided no justification in the preamble for inclusion of a "reconstruction" provision.[22] On September 5, 1979, EPA proposed to include the "reconstruction" definition in its regulations implementing both Parts C and D, 44 Fed. Reg. 51924, and, again, offered scant justification. *See, e.g.*, 44 Fed. Reg. at 51933, 51933 n.8. In its final August 7, 1980 rules, EPA deleted the reconstruction provision from the Part C PSD regulations but included it in the Part D regulations. The reconstruction provision was also challenged and briefed by the industry petitioners in the *CMA v. EPA* case (see pp. 11–12, *supra*).

In its Federal Register notice proposing to delete the "dual" definition of "source," EPA also proposed to delete the "reconstruction" requirement. 46 Fed. Reg. 16280 (March 12, 1981). As noted by EPA, in light of the proposal to adopt a plantwide definition of "source":

> [T]here is good reason to abandon the "reconstruction" test for nonattainment area new source review. That test by itself only requires review in cases where there is reconstruction, but a "significant" increase in emissions is absent. With a plant-wide definition of source, the reconstruction provision would only trigger review in cases of plant-wide reconstruction. Few instances of plant-wide reconstruction are expected. Thus, there is little justification for the added complexity this provision entails. Moreover, this change will further reduce inconsistency with the PSD rules which do not have a reconstruction provision.

46 Fed. Reg. 16281.

After it received and considered public comments, EPA took final action deleting the "reconstruction" provision, 46 Fed. Reg. 50766 (October 14, 1981), citing the same rationale

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[22] EPA merely explained how the provision would work, stating that reconstructions would not be defined using the "net increase" calculation required by the Act's definition of "modification," but instead would be defined by a "50% cost test," for which it cited no statutory basis. *See* 44 Fed. Reg. 3277.

it had provided in its proposal. *See* 46 Fed. Reg. at 50767. NRDC also challenged this EPA action in the court below. The court below vacated EPA's deletion of the reconstruction rule as "ancillary" to the vacated plantwide "source" definition. 685 F.2d at 728, Chev. Pet. App. at A-19 to A-20.

SUMMARY OF ARGUMENT

1. As this Court has made clear in *Train v. NRDC*, 421 U.S. 60, 70–90, 86–87 (1975), and *Union Electric Co. v. EPA*, 427 U.S. 246, 266 (1976), the Clean Air Act places the primary responsibility for determining the mix of controls necessary to attain and maintain national ambient air standards with the states. The decision below severely limits state flexibility to choose the most efficient and cost-effective mix of controls necessary to achieve reasonable further progress and attainment. This intrusion into an area of discretion Congress reserved to the states also contravenes Congress's intent in the 1977 Amendments to *increase* the states' flexibility in tailoring implementation plans to their particular circumstances.

2. The court below concluded that neither the Clean Air Act nor its legislative history clearly indicates how Congress intended the term "source" to be defined for purposes of Part D. Given that conclusion, EPA's judgment that a plantwide definition best serves the various purposes underlying Part D was entitled to substantial deference. The court did not accord this deference to EPA, but instead invalidated EPA's judgment on the basis of a simplistic characterization of both the Act and the purposes of Part D. This Court held in *Train v. NRDC*, 421 U.S. at 87, that EPA's interpretations of the Act, if reasonable, "preclude the Court of Appeals from substituting its judgment for that of the Agency." The plantwide definition of "source" admirably balances Congress's three primary purposes in enacting Part D: (1) to ensure that reasonable further progress and timely attainment be achieved, (2) to ensure reasonable economic growth in nonattainment areas, and (3) to provide the states with flexibility for developing their strategies for nonattainment

areas. EPA's adoption of a single, administratively feasible definition of "source" consistent with the goals of the Act was reasonable, and should not have been overturned.

3. The court below also erred in vacating EPA's deletion of the provisions of its 1980 regulations which treated a "reconstruction" of an existing source as a new stationary "source" when "the fixed capital cost of the new components exceeded 50 percent of the fixed capital cost of a comparable entirely new statutory source." This "reconstruction" concept is nowhere to be found in the Clean Air Act. Moreover, since "reconstructions" typically result in an air quality improvement, and make existing sources cleaner, more economical to operate, and more energy-efficient, EPA acted reasonably in removing the obstacles to those activities.

4. By emphasizing the absence of any "study, survey, or support" demonstrating aggregate air quality benefits resulting from application of the plantwide definition of "source," the court below incorrectly imposed on EPA an unduly high burden of justification for rescission of the "dual" definition of "source." This emphasis was particularly improper because EPA had produced no "study, survey, or support" for the "dual" definition. By imposing this burden, the court below unduly limited the range of factors that EPA could consider, and, in so doing, disregarded virtually all of the administrative record that supported the rescission. The court's interference with EPA's exercise of its statutory discretion hinders that agency's ability to change rules under changing circumstances and impermissibly expands the standard of judicial review applicable to informal rulemaking, contrary to this Court's decision in *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*, _____U.S. _____, 51 U.S.L.W. 4953 (1983), and earlier decisions, notably *Vermont Yankee Nuclear Power Corp v. NRDC*, 435 U.S. 519 (1978).

ARGUMENT

I. THE DECISION BELOW CONTRAVENES THE CLEAN AIR ACT AND DECISIONS OF THIS COURT BY DENYING EACH STATE THE RIGHT TO SELECT ITS PREFERRED MIX OF REMEDIAL MEASURES FOR ATTAINING AMBIENT AIR STANDARDS

EPA's October 14, 1981 regulations did nothing more than *allow* the states to use a plantwide "source" definition in the new source review program that each state is required to include in its Part D plan, *if* the overall Part D plan, including that definition, would ensure timely attainment of the national ambient air quality standards and reasonable further progress in the interim. In striking down this provision of the regulations, the court below precluded a plantwide definition in *any* state plan. This holding is inconsistent with the Congressional determination that *states*, not EPA (and certainly not the courts of appeals), should have primary responsibility for determining how air quality standards should be achieved.[23] It also conflicts with the decisions of this Court in *Train v. NRDC*, 421 U.S. 60, 79–80, 86–87 (1975) and *Union Electric Co. v. EPA*, 427 U.S. 246, 266 (1976). In both of those cases, this Court held that EPA *must* approve the mix of emission strategies selected by a state so long as the state plan as a whole provides for timely attainment of the standards. Finally, the decision below is contrary to Congress's expressed intent, with regard to Part D, that:

> the State may choose whatever mix of continuous emission reduction measures and strategies it wants to meet the requirements of this section.

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[23] *See* section 101(a)(3), 42 U.S.C. § 7401(a)(3) ("Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State. . . ."), and section 107(a), 42 U.S.C. § 7407(a) ("[T]he prevention and control of air pollution at its source is the primary responsibility of States and local governments").

H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 213 (1977), *reprinted in* A Legislative History of the Clean Air Act Amendments of 1977, at 2680 (hereinafter referred to as "1977 Legislative History").

The statutory requirements governing the contents of SIPs are set forth at section 110(a)(2), 42 U.S.C. § 7410(a)(2). This provision "quite clearly mandates approval of any plan which satisfies its minimum conditions." *Train v. NRDC*, 421 U.S. at 71 n.11. Elaborating on EPA's limited review authority and the states' considerable discretion to fashion specific SIP requirements, this Court described the Act's "division of responsibilities" as follows:

> [EPA] is relegated by the Act to a secondary role in the process of determining and enforcing the specific, source-by-source emission limitations which are necessary if the national standards it has set are to be met. [Footnote omitted.] Under § 110(a)(2), the Agency is *required* to approve a state plan which provides for the timely attainment and subsequent maintenance of ambient air standards, and which also satisfies that section's other general requirements. . . . Thus, so long as the ultimate effect of a State's choice of emission limitations is compliance with the national standards for ambient air, the State is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation.

Id. at 79. (emphasis in original).

In *Union Electric*, this Court reaffirmed its view that EPA lacked authority to disapprove SIPs, other than as explicitly provided in section 110(a)(2):

> The provision [§ 110(a)(2)] sets out eight criteria that an implementation plan must satisfy, and provides that *if these criteria are met* and if the plan was adopted after reasonable notice and hearing, *the Administrator "shall approve" the proposed state plan*. The mandatory "shall" makes it quite clear that the Administrator is not to be concerned with factors other than those specified [citing *Train v. NRDC*]. . .

427 U.S. at 257 (emphasis added).

In enacting the 1977 Amendments, Congress *increased* the

states' flexibility to tailor implementation plans to their particular circumstances so long as attainment and reasonable further progress toward attainment was assured. As stated in the House Report, one of the two main purposes of Part D was "to *allow States greater flexibility* [in allowing reasonable economic growth in nonattainment areas while assuring attainment of the NAAQS] than EPA's present interpretative regulations afford."[24]

The 1977 Senate Report reflects Congress's recognition that NAAQS attainment decisions must be made at the state and local level:

> The authority of States and localities to implement air pollution control programs within the framework of a national policy must be encouraged. The framework proposed in this bill is flexible in terms of the discretion in choosing methods for attaining firm national goals. *States and localities are given broad discretion to make decisions, while maintaining the minimum national air quality baselines designed to protect health and welfare, prevent discrimination among States, protect national resources within States, and provide guidance on the technical and the economic implications of various national policies.*
>
> *The problem of air pollution exists at the State and local level. That is where the public understands the problem. That is where the resources must be directed.* The Federal Government has a responsibility to provide support for those regulatory activities, but it need not have an actual presence in all regulatory activities.

S. Rep. No. 95-127, 95th Cong., 1st Sess. 10 (1977), *reprinted in* 1977 Legislative History, at 1384 (emphasis added).

As with SIP approvals under section 110(a)(2), EPA is *required* to approve nonattainment SIPs meeting the require-

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[24] H.R. Rep. No. 95-294, 95th Cong., 1st Sess. 211 (1977), *reprinted in* 1977 Legislative History, at 2678. (emphasis added). The preconstruction permit program for new and modified sources in nonattainment areas was taken primarily from the House bill. *See*, Conference Report, H.R. Rep. No. 95-564, 95th Cong., 1st Sess. at 157-58 (1977), *reprinted in* 1977 Legislative History, at 381 *et seq.*

ments of that section and Part D. Nowhere in section 110(a)(2) or Part D is there a command that the states adopt a particular definition of "source" in their permit programs. Nor do these provisions require review of alterations to existing plants which result in no net increase in plantwide emissions, if a state's chosen definition of "source" does not prevent its Part D SIP from achieving reasonable further progress and attainment. The "how" of achieving attainment or reasonable further progress is left to the states, and the states' choices are not to be second-guessed by EPA or the courts. The decision of the court below, however, reimposes the "dual" definition, without regard to whether it is necessary for attainment of ambient air standards and denies the states the flexibility this Court in *Train* and *Union Electric* has found that Congress intended them to have.

II. THE COURT BELOW IMPERMISSIBLY SUBSTITUTED ITS JUDGMENT FOR EPA'S REASONABLE CONSTRUCTION OF THE CLEAN AIR ACT

After reviewing the language and legislative history of Part D, the court below concluded:

> Part D, dense as it is, does not explicitly define what Congress envisioned as a "stationary source" to which the permit process and construction moratorium should apply. Nor is the issue squarely addressed in the legislative history.

685 F.2d at 723, Chev. Pet. App. at A-8. Having so determined, the court below should have deferred to EPA's regulatory interpretation of that term. This Court has recognized that the Clean Air Act is a complex and often ambiguous statute and that, if EPA's construction of the Act is "sufficiently reasonable," it must be upheld:

> We therefore conclude that the Agency's interpretation of §§ 110(a)(3) and 110(f) was "correct," to the extent that it can be said with complete assurance that any particular interpretation of a complex statute such as this is the "correct" one. Given this

> conclusion, as well as the facts that the Agency is charged with administration of the Act, and that there has undoubtedly been reliance upon its interpretation by the States and other parties affected by the Act, we have no doubt whatever that *its construction was sufficiently reasonable to preclude the Court of Appeals from substituting its judgment for that of the Agency.* [Citation omitted.]

Train v. NRDC, 421 U.S. at 87 (emphasis added).

The question Congress faced in developing the nonattainment sections of the 1977 Amendments to the Clean Air Act was not simply how to reduce emissions in nonattainment areas, but how to do so without crippling economic growth and vitality. As was stated in the House Report,

> [T]he fact that a substantial number of regions did not attain one or more of the standards on time posed a dilemma for the committee. On the one hand, protection of the public health remains the predominant goal of the Clean Air Act and the committee. . . . On the other hand, a complete prohibition on new growth or expansion in nonattainment regions would pose very serious problems. . . . In order to reconcile these conflicting concerns, the committee adopted section 117 of the bill. *The purpose of the provision is to permit States to allow continued growth or expansion in nonattainment areas, so long as this growth or expansion is undertaken in a manner consistent with the goals and objectives of the Clean Air Act.*

H.R. Rep. 95-294, 95th Cong., 1st Sess. at 208-210 (1977), *reprinted in* 1977 Legislative History, at 2675-77 (emphasis added).

The multiplicity of purposes underlying Part D was reaffirmed later in the same report.

> The section has two main purposes: (1) to allow reasonable economic growth to continue while making reasonable further progress to assure attainment of the standards by a fixed date; and (2) to allow states greater flexibility for the former purpose than EPA's present interpretative regulations afford.

Id. at 211. Judged against these purposes, each of which is discussed in more detail in the next two sections, the plantwide definition of "source" is plainly a reasonable interpretation of the Act.

A. The Plantwide Definition of "Source" Allows and Encourages Reasonable Economic Growth Consistent with Reasonable Further Progress toward Attainment

The major advantage of the plantwide definition of "source" is precisely that it does implement Congress's intent to allow growth and modernization in nonattainment areas consistent with reasonable further progress toward and attainment of ambient air standards. EPA's decision to adopt and to allow the states to adopt the plantwide definition, and thereby to allow a bubble-type netting of intra-plant emission increases and decreases,[25] is more than "sufficiently reasonable" to be sustained.

The bubble concept is widely recognized as one of the most efficient cost-effective and anti-inflationary means of controlling air pollution.[26] Netting intra-plant emissions gives plant

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[25] The plantwide definition would allow a plant owner or operator to replace an obsolete, energy-intensive boiler which emits 120 tons of particulate matter per year with a new energy-efficient boiler which emits 105 tons of particulate matter per year without first obtaining a permit. Under EPA's prior "dual" definition of "source" the new boiler would be deemed a new source for which a permit is required, even though emissions from the overall plant would decrease by 15 tons per year. The new boiler, in any event, is subject to stringent emission controls specified in new source standards of performance applicable under section 111 of the Act. *See* 42 U.S.C. § 7411. What is especially ironic under the "dual" definition is that, in areas in which the new source construction ban is in effect, the older boiler could not be replaced and would continue to add 15 tons of avoidable emissions to the atmosphere.

[26] In an editorial commenting upon EPA's first adoption of an air pollution bubble policy, one aimed at giving existing plants greater

operators the flexibility to install tighter controls where costs are lowest and lesser controls where costs are highest. Consequently, netting encourages plant owners and operators to apply their know-how and ingenuity to develop improved methods for controlling air pollution so that, for any given commitment of resources, more pollution control can be accomplished.

Imposition of the "dual" definition, on the other hand, seriously dampens industry's incentive and ability to modernize existing plants and to upgrade process equipment in

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flexibility in meeting clean air requirements in state plans, the *Washington Post* stated: "EPA deserves congratulations for that governmental rarity—a creative and practical new idea." WASHINGTON POST, Dec. 10, 1979, at A26. Similarly, the *New York Times* stated: "The bubble is so sensible an idea that one wonders why it took so long to surface." NEW YORK TIMES, Dec. 6, 1979, at A30. *See also EPA and Industry Pursue Regulatory Options*, SCIENCE, Feb. 20, 1981, at 796-98. Another commentator cited the following example of how the "bubble" would work at an existing plant:

> Until recently, E.I. du Pont de Nemours & Co. was slated to spend a staggering $26 million to meet clean air standards at its Chambers, N.J., chemical plant. But under a new regulatory scheme developed by the Environmental Protection Agency, du Pont's compliance bill could be pared to just $6.5 million, and still total plant emissions *would be reduced a full 89%*, five percentage points more than under the costlier plan.

New Ways to Short Cut Costly Rules, DUN'S REVIEW, Feb., 1980, 62 (emphasis added). *See generally* National Commission on Air Quality, *To Breathe Clean Air*, 2.1-84, 4.1-36-37 (1981). The National Commission on Air Quality later stated with regard to use of the bubble concept in the Part C program:

> The bubble policy offers companies a strong incentive to reduce emissions from existing facilities in order to modernize without triggering [prevention of significant deterioration] review. While there are not sufficient data to quantify the influence of the bubble policy on total emission levels, the consensus of regulators and industry is that it has led to significant reductions. . . .

Id. at 3.5-48 (citation omitted).

nonattainment areas.[27] It takes months, sometimes years, to secure a permit to construct, and the combined direct costs and indirect costs (through delay of undergoing review) may well be prohibitive. These problems are particularly acute in the steel, chemical, automobile and petroleum industries in which the plants are often complex, integrated facilities which undergo constant modifications in response to market demands for their products. A basic chemical manufacturing plant, for example, typically has numerous processes and may manufacture up to fifty separate products.[28]

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[27] Petitioner United States Steel Corporation reported the following experience with the application of the "dual" definition to its Fairfield, Alabama integrated steel-making facilities:

> The Fairfield plant was "modernized" by installation of clean iron, steel and coke-making facilities and retirement of old facilities at a cost of over $350 million, including $20 million for pollution control facilities. The modernization project demonstrably reduced overall plant emissions from 60,876 tons per year to 3,962 tons per year, a reduction of 93%. Air quality, as measured at the nearest monitor point, improved dramatically. Nevertheless, EPA applied the "dual" definition of "source" to the modernization project, and, two years after construction began, required the installation of additional control facilities to meet lowest achieveable emission rate (LAER) requirements. Resolution of this issue delayed startup of the facilities for six months. An additional $33 million was spent on the LAER controls and other controls on existing facilities which were required by EPA. There was no measurable air quality improvement as a result of these additional controls. The plant could have installed controls on the existing facilities in lieu of modernization and avoided these new source problems. However, the emission reduction which would have resulted from this approach would have been only 80%, and the old facilities, with the attendant problems of age, would have remained. In effect, as a result of the "dual" definition of "source," the plant was penalized for improving its facilities and achieving greater reductions.

[28] Even plants that manufacture one basic type of chemical product, *e.g.*, synthetic rubber or transportation and heating fuels, require numerous processes to produce different grades of that product for widely varying uses or consumer specifications.

Process changes at such plants must occur frequently if the plant is to respond to market demands and technological developments and remain competitive in domestic and international markets. Products are constantly being modified and improved. New uses and markets for existing products are sought, and new products are introduced. As a result, at any given time a plant might shut down one or more processes due to slack demand, while modifying or adding new processes to increase production capacity for existing products or to manufacture new products. In addition, processes are changed to produce products more economically, to conserve energy and other resources, or to reduce pollution.[29]

A definition of "source" which requires preconstruction review of (or, if the construction moratorium applies, prohibits) any construction or alteration of any major piece of process equipment within the plant whether or not emissions increase destroys a plant's flexibility to respond quickly and

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[29] As recognized by the court below in *Alabama Power*:

> It is important first to recognize *that alterations of almost any plant occur continuously; whether to replace depreciated capital goods, to keep pace with technological advances, or to respond to changing consumer demands.* This dynamic aspect of American industry was not disputed by the parties. To apply the second construction [precluding application of the "bubble" concept to the Part C PSD program], however, would require PSD review for many such routine alterations of a plant; a new unit would contribute additional pollutants, these increases could not be set off against the decrease resulting from abandonment of the old unit, and thus the change would become a "modification" subject to PSD review. *Not only would this result be extremely burdensome, it was never intended by Congress in enacting the Clean Air Act Amendments.*

636 F.2d at 401 (emphasis added). This "dynamic aspect of American industry" does not change merely because a plant is located in a nonattainment area. Nor is it any less burdensome for such sources to undergo preconstruction review for the hundreds of routine modifications that keep a plant productive and competitive.

effectively to market demands.[30] It also impairs the incentive to upgrade older, dirtier equipment.[31] In other cases plants can be precluded from using more economical, readily available domestic energy sources.[32] This not only forces up costs, but substantially increases the risk that the market demand prompting the modification will have disappeared or have been satisfied by domestic or foreign competitors.

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[30] *See, e.g.*, Comments of Merck Chemical Manufacturing Division, contained in the Appendix filed below (C.A. App.) as part of the certified record in CMA v. EPA, C.A. App. 90, which pointed out that delays in the pharmaceutical industry in obtaining permits not only can result in losing business abroad, but also can result in substantial delays in making necessary new drugs available in the American market.

[31] *See, e.g.*, Comments of Crown Zellerbach, J.A. 131, which pointed out that the bubble concept would make it possible to add a flexographic printing press without using expensive and energy-consuming additional equipment. Because of its productivity, this new press could be operated under a bubble regimen at maximum operating hours, yet at the same time decrease total plant emissions. *See also* Comments of American Textile Manufacturers Institute, Inc., J.A. 133.

[32] *See, e.g.*, Comments of Union Oil Company of California, C.A. App. 153; Chevron U.S.A., C.A. App. 162 (inability to "bubble" emissions results in inability to build major new refinery project that will decrease emissions and energy consumption and lessen U.S. dependence on foreign oil); Louisiana-Pacific Company, J.A. 118 (plantwide definition would permit replacement of old chemical recovering furnaces with new well-controlled furnaces, resulting in "greatly reduce[d]" emissions and a savings of 500,000 barrels per year of imported oil); Congressman George Miller, J.A. 135 (power plant unable to install two waste wood-fired boilers to replace oil-fired boilers in absence of plantwide "source" definition). *See also* the Comments of the Department of Energy, which has actively supported the plantwide "source" definition as the most economical and energy-efficient means of development in nonattainment areas. C.A. App. 115, 374.

B. The Plantwide Definition of "Source" Gives States the Flexibility to Manage their Emissions in the Most Efficient and Cost-Effective Manner

The final purpose which Congress sought to further in the programs for nonattainment areas was to increase state flexibility. It cannot be reasonably disputed that the regulations at issue here further that purpose. They permit the states to use a plantwide "source" definition and to obtain the substantial administrative and economic benefits which flow from that definition where attainment and reasonable further progress can be demonstrated. The court below deprived the states entirely of this flexibility.

Numerous commenters, including a number of the states, pointed out that a plantwide definition of "source" was *not* inconsistent with the purposes of Part D.[33] These states demonstrated that the "dual" definition of "source" will do nothing to expedite reasonable further progress toward attainment. To force these and similarly situated states to adopt a "source" definition inconsistent with their internal emission management needs would contradict the Congressional declaration, in enacting Part D, that "the State may choose whatever mix of continuous emission reduction measures and strategies it wants to meet the requirements of this section."[34]

Moreover, as various states commented to EPA, the "dual" definition has substantial practical and administrative disadvantages.[35] In contrast, the plantwide definition is easily

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[33] *See* Comments of the Arizona Department of Health Services, J.A. 136, Comments of the New York State Department of Environmental Conservation, J.A. 128, and Comments of Ohio EPA, J.A. 138. *See also* the affidavit of Milton Feldstein of the California Air Resources Board, J.A. 162.

[34] H.R. Rep. No. 95-294, 95th Cong., 1st Sess. 213 (1977), *reprinted in* 1977 Legislative History, at 2680.

[35] *See, e.g.*, the Comments of the Virginia State Air Pollution Control Board, pointing out that EPA's "confusing and complex mess of different definitions" results in a situation that is unman-

understood and administered. In virtually every case, common sense notions of what constitutes a "plant" will correspond to the Agency's definition of "source." The "dual" definition, however, which in part employs an equipment-based approach, requires the reviewing authority and the source to make difficult, and at times meaningless, distinctions among pieces of equipment of different sizes.[36] The plantwide definition thus provides far more certainty and can be understood and acted upon by plant-level personnel without having to obtain concurrences from various agencies or legal counsel.

The plantwide definition of "source" also brings a measure of uniformity to the Clean Air Act's two major air quality-based new source review programs. A plantwide definition is used in the PSD program, which applies in attainment areas. Utilization of a single definition for both the Part C and Part D programs will, as EPA has noted, reduce "confusion and inconsistency." 46 Fed. Reg. 16281 (March 12, 1981).

The plantwide definition spares the states from having to review changes that have no significant impact on air quality. Under the "dual" definition, the state and the source owner or operator must go through a permit proceeding even if overall emissions from the plant as a whole decrease. By allowing states to focus only on changes which are important from an air quality perspective (*i.e.*, those which result in a

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ageable given available resources. C.A. App. 79-83. The Alabama Air Pollution Control Commission similarly expressed concern at the vast amount of "red tape" created that results in no benefit to air quality. C.A. App. 73-78.

[36] For example, in a household appliance or automobile paint shop is each painting booth a "source," or are groups of booths painting the same item on an assembly line the "source," or is the entire assembly line the "source"? Are individual coke ovens "sources" or is the coke oven battery the "source"? Is a conveyer belt bringing raw materials or intermediate materials to a process that is a "source" part of that "source" or a separate "source"?

significant increase in emissions), the plantwide definition assures that a permit program is not overburdened with meaningless reviews of permit applications that drain industry and state resources without benefitting air quality.

Under the challenged regulations, the states are not required to adopt the plantwide definition of "source," but they have the discretion to do so. The great majority of states, which do not rely on or need a "dual" definition of the term "source" to demonstrate reasonable further progress or attainment, should not be precluded from adopting the plantwide definition for new source review.[37]

The primary goal of Part D is the attainment of NAAQS by specified dates. Congress intended that the states have flexibility in meeting this goal. The only inflexible requirement is that a state must be able to demonstrate that its Part D plan will attain this goal. The plantwide definition of "source" is neither required nor prohibited—and is acceptable where its use does not prevent attainment of the NAAQS. EPA's decision in October, 1981 to cut the "red tape" and to allow states to make their own emission management decisions, consistent with reasonable further progress and attainment, was a reasonable exercise of its discretion under Part D. The court below wrongfully deprived EPA of that discretion and impermissibly substituted its policy judgment for that of EPA.

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[37] Given the opportunity, many states embraced the additional flexibility provided by EPA's plantwide definition of "source." As EPA pointed out in its motion in the court below to stay issuance of the mandate, within one year of the promulgation of the plantwide definition (*i.e.*, by Oct. 14, 1982) eighteen states had adopted new source review programs based upon the amended rules. Respondent's Motion to Stay Issuance of the Mandate, at 2, NRDC v. Gorsuch, No. 81-2208 (D.C. Cir. motion filed November 2, 1982). Thirteen more states were in the process of revising their new source review programs in accordance with the regulations struck down by the court below. *Id.* n.1.

III. EPA'S DELETION OF THE RECONSTRUCTION PROVISION WAS PROPER AND SHOULD NOT HAVE BEEN VACATED BY THE COURT BELOW

EPA's August 7, 1980 regulations had imposed a "reconstruction" requirement upon the states for nonattainment areas but not for PSD areas. Those regulations deemed a "reconstruction" to have taken place when "the fixed capital cost of the new components exceed[ed] 50 percent of the fixed capital cost of a comparable entirely new stationary source." *See, e.g.*, 45 Fed. Reg. 52744 (formerly 40 C.F.R. § 51.18(j)(1)(ix) (1981)). Although plants normally undertake reconstructions or rehabilitations of existing sources to maintain existing capacity, not to expand capacity, EPA deemed reconstructed stationary sources to be subject to nonattainment area preconstruction review and to the necessity of obtaining a permit in the same manner as a new stationary source. *Id.*

Petitioners challenged these provisions in *CMA* v. *EPA* (see pp. 11–12, *supra*) because they treat existing source modifications the same as the construction of new sources. The "reconstruction" concept is nowhere to be found in the Clean Air Act. Part D does not define "reconstruction" and defines modifications in terms of emissions, not dollars. A "modification" triggering new source review, as defined in section 111(a)(4) of the Act, 42 U.S.C. § 7411(a)(4), and expressly incorporated for purposes of Part D of the Act by section 171(4), 42 U.S.C. § 7501(4), occurs only where (1) there is a physical or operational change in an existing source, and (2) that change results in a net increase in emissions.[38]

The "reconstruction" provision imposed by EPA's August 7, 1980 regulations subjected to new source review modifications categorized by EPA as "reconstructions" even though a net emission decrease, not an increase, may have resulted. In effect, EPA substituted a 50% replacement cost test—a concept foreign to Part D and unrelated to air quality—for the second prong of the "modification" definition. EPA lacks

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[38] *See, e.g.*, Alabama Power, 636 F.2d at 399–403.

authority to extend the coverage of the Act or to redefine statutory terms to eliminate the statutory requirement that a physical change must cause an increase in emissions before it can be subjected to the nonattainment area review requirements as a "modification."

As EPA pointed out in withdrawing the reconstruction test for modifications, that test would be virtually meaningless following adoption of a plantwide definition of "source" because, practically speaking, few whole plants will be reconstructed. The court below vacated EPA's deletion of the reconstruction rule on this ground, stating that it was "ancillary" to EPA's adoption of the plantwide definition of "source," which the court also had vacated. 685 F.2d at 728, Chev. Pet. App. at A-19 to A-20. Petitioners submit that the court below should have upheld EPA's decision to delete the reconstruction rule, whether or not the court upheld the plantwide definition, because, as noted above, there is no statutory basis for the rule. If the validity of EPA's action deleting the reconstruction rule is tied to the plantwide definition of "source," however, as the court below asserted, this Court's validation of the plantwide "source" definition will also validate EPA's decision to delete the reconstruction rule. *See, e.g.*, 46 Fed. Reg. 50767.

EPA also gave as a basis for its October, 1981 action the need to make the PSD and nonattainment regulations the same with regard to "reconstruction." *See* 46 Fed. Reg. 50767. The lack of uniformity between the treatment of "reconstruction" in the Part C and Part D new source review programs had resulted in confusion, unwarranted complexity, needless delay and unnecessary compliance and regulatory costs in the new source review process.[39] Since "reconstructions" typically

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[39] *See, e.g.*, Comments of Southern Calif. Gas Co. at 2, C.A. App. 148; Air Products and Chemicals, Inc., C.A. App. 127; Pennzylvania Power & Light Co., C.A. App. 130; SOHIO, C.A. App. 140; Inland Steel Corp. at 2-4, C.A. App. 144-46; Texas Eastern Transmission Corp. at 1, C.A. App. 179; Owens-Illinois, C.A. App. 141.

result in an air quality improvement, and generally make existing sources cleaner, more economical to operate, and more energy-efficient, EPA acted reasonably to remove the new source review requirements. In light of these legitimate concerns, EPA properly exercised its discretion by deleting the "reconstruction" provision.

IV. THE COURT BELOW IMPOSED ON EPA AN UNDULY HIGH BURDEN OF JUSTIFICATION FOR RESCISSION OF A RULE

The court below faulted EPA for failing to cite "any study, survey, or support" for its position that the "dual" definition would retard improvement of air quality in the aggregate, noting that EPA had taken the very opposite position in adopting the "dual" definition in August 1980. 685 F.2d at 727 n.41, Chev. Pet. App. at A-18 n.41.

In emphasizing the absence of any "study" or "survey" to support the plantwide definition, the court below ignored the fact that there is no "study, or survey, or support" for the "dual" definition. More fundamentally, in so doing, the court below unduly narrowed the range of factors EPA could consider and intruded on EPA's discretion under the Clean Air Act. This led the court below to disregard the great majority of the eighty-one public and state comments that presented strong support for EPA's proposals to rescind the "dual" definition of "source." *See* 46 Fed. Reg. at 50766, 50767-68.

By thus limiting the administrative record upon which EPA could rely and suggesting that EPA must produce a "study" or "survey" not required for the original rule, the court below expanded the scope of its judicial review in a way that this Court has recently rejected. In *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*, _____U.S. _____, 51 U.S.L.W. 4953 (1983), ("*MVMA*"), this Court overruled a similar attempt of the court below to require an agency to provide more clear and convincing

reasons for rescinding a rule than those upon which it relied when it originally promulgated the rule.

Recognizing that "an agency must be given ample latitude to 'adapt their rules and policies to the demands of changing circumstances'," 51 U.S.L.W. at 4956, *MVMA* holds that an agency rescinding a rule must supply the same reasoned analysis applicable to the issuance of the rule. *See* 51 U.S.L.W. at 4956-57. In this case, however, by deeming only a "study, survey, or support" to be an adequate justification for EPA's rescission, that was not required for the original rule, the court below imposed on EPA a heavier burden than that required for the original rule. This result is inconsistent with one of the reasons for the development of the administrative process—to eliminate the "constant danger of harmful rigidity . . . ."[40]

In rescinding its "dual" definition EPA fully met the standard decision-making elements prescribed in *MVMA*. Its decision-making path was clear: on consideration of the totality of the record before it, EPA decided on balance that its 1980 "dual" definition of source had proved inappropriate. *See* 46 Fed. Reg. at 50766, 50767-68.

This Court has recognized in other cases that an agency may make and rely upon reasoned policy judgments and that any such judgment " 'necessarily involves deductions based on the expert knowledge of the Agency'." *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 595 (1981) (footnote omitted), (*quoting*, *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 814 (1978), *quoting*, *FPC v. Transcontinental Gas Pipeline Corp.* 365 U.S. 1, 29 (1961)). In rescinding the "dual" definition of "source," EPA has, with a full explanation based on the administrative record, rationally changed its expert judgment as to the best policy to implement Part D.

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[40] "Administrative Procedure in Government Agencies": Report of the Attorney General's Committee on Administrative Procedure. S. Rep. No. 8, 77th Cong., 1st Sess. 14 (1941).

In vacating EPA's action, the court below exceeded the scope of judicial review articulated in *MVMA* and a host of earlier decisions, notably *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 543-549 (1978), and cases therein cited.

CONCLUSION

For the foregoing reasons, the decision below should be reversed.

Respectfully submitted,

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A. STATUTORY PROVISIONS: PERTINENT SECTIONS OF THE CLEAN AIR ACT

Title I—Air Pollution Prevention and Control

Part A—Air Quality and Emission Limitations

Section 101 (42 U.S.C. § 7401). Findings and Purposes

(a) The Congress finds—

* * *

(3) that the prevention and control of air pollution at its source is the primary responsibility of States and local governments;

* * *

Section 107 (42 U.S.C. § 7407). Air Quality Control Regions

(a) Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

* * *

(d)(1) For the purpose of transportation control planning, part D of this subchapter (relating to nonattainment), part C of this subchapter (relating to prevention of significant deterioration of air quality), and for other purposes, each State, within one hundred and twenty days after August 7, 1977, shall submit to the Administrator a list, together with a summary of the available information, identifying those air quality control regions, or portions thereof, established pursuant to this section in such State which on August 7, 1977—
(A) do not meet a national primary ambient air quality standard for any air pollutant other than sulfur dioxide or particulate matter;
(B) do not meet, or in the judgment of the State may not in

the time period required by an applicable implementation plan attain or maintain, any national primary ambient air quality standard for sulfur dioxide or particulate matter;
(C) do not meet a national secondary ambient air quality standard;
(D) cannot be classified under subparagraph (B) or (C) of this paragraph on the basis of available information, for ambient air quality levels for sulfur oxides or particulate matter; or
(E) have ambient air quality levels better than any national primary or secondary air quality standard other than for sulfur dioxide or particulate matter, or for which there is not sufficient data to be classified under subparagraph (A) or (C) of this paragraph.
(2) Not later than sixty days after submittal of the list under paragraph (1) of this subsection the Administrator shall promulgate each such list with such modifications as he deems necessary.

* * *

(4) [1]Any region or portion thereof which is not classified under subparagraph (B) or (C) of paragraph (1) of this subsection for sulfur dioxide or particulate matter within one hundred and eighty days after August 7, 1977, shall be deemed to be a region classified under subparagraph (D) of paragraph (1) of this subsection.

* * *

Section 110 (42 U.S.C. § 7410). Implementation Plans

(a)(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within nine months after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 109 for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. . . .
(2) The Administrator shall, within four months after the

[1] Subsection 107(d) was enacted without a paragraph (3).

date required for submission of a plan under paragraph (1), approve or disapprove such plan or each portion thereof. The Administrator shall approve such plan, or any portion thereof, if he determines that it was adopted after reasonable notice and hearing and that—

(A) except as may be provided in subparagraph (I), (i) in the case of a plan implementing a national primary ambient air quality standard, it provides for the attainment of such primary standard as expeditiously as practicable but (subject to subsection (e)) in no case later than three years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard); and (ii) in the case of a plan implementing a national secondary ambient air quality standard, it specifies a reasonable time at which such secondary standard will be attained;

(B) it includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to, transportation controls, air quality maintenance plans, and preconstruction review of direct sources of air pollution as provided in subparagraph (D);

* * *

(I) it provides that after June 30, 1979, no major stationary source shall be constructed or modified in any nonattainment area (as defined in section 171(2)) to which such plan applies, if the emissions from such facility will cause or contribute to concentrations of any pollutant for which a national ambient air quality standard is exceeded in such area, unless, as of the time of application for a permit for such construction or modification, such plan meets the requirements of part D (relating to nonattainment areas);

* * *

(3)(A) The Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of paragraph

(2) and has been adopted by the State after reasonable notice and public hearings.

* * *

Section 111 (42 U.S.C. § 7411). Standards of Performance for New Stationary Sources

(a) For purposes of this section:
(1) The term "standard of performance" means—
(A) with respect to any air pollutant emitted from a category of fossil fuel fired stationary sources to which subsection (b) of this section applies, a standard—
(i) establishing allowable emission limitations for such category of sources, and
(ii) requiring the achievement of a percentage reduction in the emissions from such category of sources from the emissions which would have resulted from the use of fuels which are not subject to treatment prior to combustion,
(B) with respect to any air pollutant emitted from a category of stationary sources (other than fossil fuel fired sources) to which subsection (b) applies, a standard such as that referred to in subparagraph (A)(i);

* * *

(2) The term "new source" means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.
(3) The term "stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant.
(4) The term "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

* * *

(6) The term "existing source" means any stationary source other than a new source.

* * *

(e) After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

* * *

Part D—Plan Requirements for Nonattainment Areas

Section 171 (42 U.S.C. § 7501). Definitions

For the purpose of this part and section 110(a)(2)(I)—

(1) The term "reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval or promulgation of plan provisions under this part and section 110(a)(2)(I) and regular reductions thereafter) which are sufficient in the judgment of the Administrator, to provide for attainment of the applicable national ambient air quality standard by the date required in section 172(a).

(2) The term "nonattainment area" means, for any air pollutant an area which is shown by monitored date or which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any national ambient air quality standard for such pollutant. Such term includes any area identified under subparagraphs (A) through (C) of section 107(d)(1).

(3) The term "lowest achievable emission rate" means for any source that rate of emissions which reflects—

(A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(B) the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

(4) The terms "modification" and "modified" mean the same as the term "modification" as used in section 111(a)(4) of this Act.

Section 172 (42 U.S.C. § 7502). Nonattainment Plan Provisions

(a)(1) The provisions of an applicable implementation plan for a State relating to attainment and maintenance of national ambient air quality standards in any nonattainment area which are required by section 110(a)(2)(I) as a precondition for the construction or modification of any major stationary source in any such area after July 1, 1979, shall provide for attainment of each such national ambient air quality standard in each such area as expeditiously as practicable, but, in the case of national primary ambient air quality standards, not later than December 31, 1982.

(2) In the case of the national primary ambient air quality standard for photochemical oxidants or carbon monoxide (or both) if the State demonstrates to the satisfaction of the Administrator (on or before the time required for submission of such plan) that such attainment is not possible in an area with respect to either or both of such pollutants within the period prior to December 31, 1982, despite the implementation of all reasonably available measures, such provisions shall provide for the attainment of the national primary standard for the pollutant (or pollutants) with respect to which such demonstration is made, as expeditiously as practicable but not later than December 31, 1987.

(b) The plan provisions required by subsection (a) shall—

(1) be adopted by the State (or promulgated by the Administrator under section 110(c)) after reasonable notice and

public hearing;
(2) provide for the implementation of all reasonably available control measures as expeditiously as practicable;
(3) require, in the interim, reasonable further progress (as defined in section 171(1)) including such reduction in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology;
(4) include a comprehensive, accurate, current inventory of actual emissions from all sources (as provided by rule of the Administrator) of each such pollutant for each such area which is revised and resubmitted as frequently as may be necessary to assure that the requirements of paragraph (3) are met and to assess the need for additional reductions to assure attainment of each standard by the date required under subsection (a);
(5) expressly identify and quantify the emissions, if any, of any such pollutant which will be allowed to result from the construction and operation of major new or modified stationary sources for each such area;
(6) require permits for the construction and operation of new or modified major stationary sources in accordance with section 173 (relating to permit requirements);
(7) identify and commit the financial and manpower resources necessary to carry out the plan provisions required by this subsection;
(8) contain emission limitations, schedules of compliance and such other measures as may be necessary to meet the requirements of this section;

* * * *

Section 173 (42 U.S.C. § 7503). Permit Requirements

The permit program required by section 172(b)(6) shall provide that permits to construct and operate may be issued if—
(1) the permitting agency determines that—
(A) by the time the source is to commence operation, total

allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities and from the proposed source will be sufficiently less than total emissions from existing sources allowed under the applicable implementation plan prior to the application for such permit to construct or modify so as to represent (when considered together with the plan provisions required under section 172) reasonable further progress (as defined in section 171); or

(B) that emissions of such pollutant resulting from the proposed new or modified major stationary source will not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources under section 172(b);

(2) the proposed source is required to comply with the lowest achievable emission rate;

(3) the owner or operator of the proposed new or modified source has demonstrated that all major stationary sources owned or operated by such person (or by an entity controlling, controlled by, or under common control with such person) in such State are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under this Act; and

(4) the applicable implementation plan is being carried out for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirementsof this part.

Any emission reductions required as a precondition of the issuance of a permit under paragraph (1)(A) shall be legally binding before such permit may be issued.

* * *

Title III—General

* * *

Section 302 (42 U.S.C. § 7602). Definitions

When used in this Act—

* * *

(j) Except as otherwise expressly provided, the terms "major stationary source" and "major emitting facility" mean any stationary facility or source of air pollutants which directly emits, or has the protential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).

B. GLOSSARY OF CERTAIN ABBREVIATIONS AND TECHNICAL TERMS

(Section references are to the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, as amended)

Attainment or PSD areas—(for purposes of Part C of the Act) Areas identified by the states as having ambient air quality levels better than any NAAQS or which cannot be classified on the basis of available information. Sections 107(d), 161.

Bubble—Netting within a plant of emission increases against decreases of such emissions.

Construction moratorium—Prohibition of construction or modification of major stationary sources that would contribute to violation of NAAQS in nonattainment areas if a Part D SIP is not in effect. Section 110(a)(2)(I).

LAER (for purposes of Part D of the Act)—Lowest achievable emission rate. Sections 171(3), 173(2).

Major stationary source—Source emitting, or having potential to emit, one hundred tons per year or more of any air pollutant. Section 302(j).

Modification of a source (for purposes of Part D of the Act)—A physical change in or manner of operating a source resulting in a net pollutant emission increase. Sections 111(a)(4), 171(4).

NAAQS—National ambient air quality standards. Section 109.

New source (for purposes of section 111)—Any stationary source constructed or modified after publication of regulations or proposed regulations prescribing an applicable standard of performance. Section 111(a)(2).

Nonattainment areas (for purposes of Part D of the Act)—Areas identified by the states as not meeting one or more NAAQS. Sections 107(d), 171(2).

Offset ruling—EPA's Emission Offset Interpretative Ruling, 41 Fed. Reg. 55524 (December 21, 1976).

Part C—Sections 160–169A dealing with prevention of significant deterioration.

Part D—Sections 170–178 dealing with plan requirements for nonattainment areas.

PSD—Prevention of "significant deterioration." Part C of Title I of the Act (Sections 160–169A).

Reasonable further progress (for purposes of Part D of the Act)—Annual incremental reductions in emissions of applicable air pollutants sufficient to provide for timely attainment of NAAQS. Section 171(1).

Reconstruction—when more than 50% of the capital cost of the components of a source is replaced, regardless of whether this causes a net increase in emissions. EPA's nonattainment area regulations; *see, e.g.*, former 40 C.F.R. § 51.18(j)(1)(ix) (1981).

SIPs—State Implementation Plans for the attainment, maintenance and enforcement of NAAQS. Section 110.

New source standards of performance (for purposes of Section 111)—Air pollutant emission standards reflecting the degree of emission reduction achievable through application of the best system of continuous emission reduction that has been adequately demonstrated. Section 111(a)(1).

C. REVISIONS TO THE LIST OF CORPORATE PETITIONERS' PARENT COMPANIES, SUBSIDIARIES AND AFFILIATES SET FORTH, PURSUANT TO SUPREME COURT RULE 28.1, IN APPENDIX C TO THE PETITION FOR A WRIT OF CERTIORARI IN NO. 82-1247

The following corrections, additions and deletions are to be made to the list of corporate petitioners which were intervenor-respondents together with the American Petroleum Institute in the proceedings below. The original list of subsidiaries and affiliates for Gulf Oil Corporation is set forth in Appendix C to the Petition for a Writ of Certiorari in No. 82-1247 at 38a - 41a, for Mobil Oil Corporation at 43a - 52a, and for Phillips Petroleum Company at 53a - 54a.

Gulf Oil Corporation

1. "Chinhac Chemical Company, Ltd." should be "Chinhae Chemical Company, Ltd."
2. "G.S. Equipment and General Supply," "Gulf Canada Petroleum Inc.," "Gulf Canada Resources Inc./Resources Gulf Canada Inc.," "Gulf Canada Resources Leasing Inc." and "Gulf Oil Canada-Greenland A/S," should be *deleted* in favor of "Gulf Oil Canada Limited Associated Companies."
3. "China Gulf Plastics Corporation" should be *deleted.*
4. "Taiwan VCM Industries Corporation" should be *deleted.*
5. "Bio Research Center Company, Ltd." should be *deleted.*
6. "Agricultural Anhydrous Ammonia Co. Ltd." should be *deleted.*
7. "Alberta Products Pipe Line Ltd." should be *deleted.*
8. "Alberta Underground Storage Limited." should be *deleted.*
9. "Burgan Pension Fund Trustees Limited" should be *deleted.*
10. "Canada Systems Group (EST) Limited" should be *deleted.*
11. "Cansulex Limited" should be *deleted.*

12. "Carnduff Gas Limited" should be *deleted.*
13. "Central Pipeline Company Limited, The" should be *deleted.*
14. "Commercial Alcohols Limited" should be *deleted.*
15. "Compagnie D'Investissement Combustibles De Reacteurs A Haute Tp" should be *deleted.*
16. "Components Industriales Mexicanos, S.A." should be *deleted.*
17. " 'Condor' Industria Quimica, S.A." should be *deleted.*
18. "Crediton Enterprises, Inc." should be *deleted.*
19. "Econ Oil (1977) Inc." should be *deleted.*
20. "G&C Realty Limited" should be *deleted.*
21. "GAE Propane Blanchard Ltee." should be *deleted.*
22. "GEA/Power Cooling Systems, Inc." should be *deleted.*
23. "Glen Park Gas Pipe Line Company Limited" should be *deleted.*
24. "Gobles Oil and Gas Limited" should be *deleted.*
25. "Kaisha" should be *deleted.*
26. "Ice Pinturas, S.A." should be *deleted.*
27. "Ico Pinturas, S.A." should be *deleted.*
28. "Industrias Veneedor, S.A." should be *deleted.*
29. "Interprovincial Pipe Line Limited" should be *deleted.*
30. "Interquimica S.A." should be *deleted.*
31. "Iranian Oil Participants Limited" should be *deleted.*
32. "Iranian Oil Services (Holdings) Limited" should be *deleted.*
33. "Kuwait Oil Company Trustees Limited" should be *deleted.*
34. "Maple Insurance Limited" should be *deleted.*
35. "Mid-Atlantic Chemical Corporation S.A." should be *deleted.*
36. "Montreal Pipe Line Limited" should be *deleted.*
37. "Morrow Fuel Oil Sales Ltd." should be *deleted.*
38. "Mozambique Gulf Oil" should be *deleted.*
39. "Newfoundland Propane Limited" should be *deleted.*
40. "Northward Development Ltd." should be *deleted.*
41. "Northwest Propane Ltd." should be *deleted.*

42. "Northwest Terminals Ltd." should be *deleted.*
43. "Nova, An Alberta Corporation" should be *deleted.*
44. "Panindustrial, S.A." should be *deleted.*
45. "Peace Pipe Line, Ltd." should be *deleted.*
46. "Penrith Enterprises, Inc." should be *deleted.*
47. "Permapint, S.A." should be *deleted.*
48. "Petromont, Inc." should be *deleted.*
49. "Polyquimicos, S.A." should be *deleted.*
50. "Produtos Quimicos Somox, Ltda." should be *deleted.*
51. "Redwater Water Disposal Company Limited" should be *deleted.*
52. "Resinas Andinas S.A." should be *deleted.*
53. "Rimbey Pipe Line Co., Limited" should be *deleted.*
54. "Ripon Enterprises, Inc." should be *deleted.*
55. "Servico Limited" should be *deleted.*
56. "Sorrenio Electronics, Inc." should be *deleted.*
57. "Superior Propane Limited" should be *deleted.*
58. "Syncrude Canada, Ltd." should be *deleted.*
59. "Taiwan Plasticizer Corporation" should be *deleted.*
60. "Trans Mountain Pipe Line Company, The" should be *deleted.*
61. "Trans-Northern Pipe Line Company" should be *deleted.*
62. "Western G.M.C. Pontiac Buick Ltd." should be *deleted.*
63. "Forenade Svenska Oljeimportorers AB" should be *added.*
64. "Gulf Oil Corporation ERISA" should be *added.*
65. "Gulf Oil Terminals (Ireland) Limited" should be *added.*
66. "Harshaw - Bryce & Co. Pty. Ltd." should be *added.*
67. "Insco Holding & Finance Company N.V." should be *added.*
68. "Plastijal Sociedad Anonima" should be *added.*
69. "Solvo Finanzierungs-Und Beteiligungs AG" should be *added.*
70. "Valley Pines Associates" should be *added.*

Mobil Oil Corporation

1. "AIMCO (Blasbjerg) Limited" should be *added.*

2. "Arabian International Maritime Company" should be *added.*
3. "Compania Colombiana De Forestacion S.A." should be *added.*
4. "Constructura Calle 67, Limitada" should be added.
5. "East Texas Sal Water Disposal Company" should be added.
6. "Handelmaatschappij Jugenholtz & Co. B.V." should be *spelled* "Handelmaatschappij Hugenholtz & Co. B.V."
7. "Inmunizadoras Unidas, S.A." should be *added.*
8. "Mobil Oil de Mexico, Sociedad Anonima" should be *added.*
9. "New Zealand Synthetic Fuels (Housing) Corporation Limited" should be *added.*
10. "S.A. Ets. George DUBOIS" should be *added.*
11. "Societe Africaine de Rarrinage" should be *spelled* "Societe Africaine de Raffinage."
12. "Societe Jean Roussel S.A." should be *added.*
13. "Societe Tehadienne D'Entreposage de Produits Petroliers" should be *spelled* "Tchadienne D'Entreposage de Produits Petroliers."
14. "Wadohjushi Kabushiki Kaisha" should be *spelled* "Wakohjushi Kabushiki Kaisha."
15. "City Point Oil Terminal, Inc." should be *deleted.*
16. "Australasian Petroleum Company Proprietary Limited" should be *deleted.*
17. "Croager Bros. Limited" should be *deleted.*
18. "Fountain Garage (Alfreton Road)" should be *deleted.*
19. "Fountain Garage (Leyton)" should be *deleted.*
20. "H.E. Oils Limited" should be *deleted.*
21. "Highgate Associates, Ltd." should be *deleted.*
22. "Industria de Carbon del Valle Cauca, S.A." should be *deleted.*
23. "Island Exploration Company Proprietary Limited" should be *deleted.*
24. "Michael Beecham Limited" should be deleted.
25. "Mobil Oil Angola, SARL" should be deleted.

26. "Mobil Tyco Solar Energy Corporation" should be *deleted.*
27. "Modern Buildings Membranes, Ltd." should be *deleted.*
28. "Motrate Products Limited" should be *deleted.*
29. "Ragosine Oil Company Limited" should be *deleted.*
30. "Roe Lubricants Limited" should be *deleted.*
31. "Societe d'Entreposage d'Hydrocarbures de Bingo (SEHBI)" should be *deleted.*

Phillips Petroleum Company

1. "Kanai LNG Corporation" should be *spelled* "Kenai LNG Corporation."
2. "Phillips Gas Supply Corporation" should be *deleted.*
3. "Phillips Pacific Checmical Corporation" should be *spelled* "Phillips Pacific Chemical Corporation."